

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4781 OF 2005**

Shyam Gaikwad ...Applicant

Versus

State of Maharashtra ...Respondents

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Mr. C.K. Pendse i/b Vaibhav Karnik, Advocate for Applicant

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 29TH AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The learned advocate for the applicant states that he is not pressing the prayer for transfer of Sessions Case No. 959 of 1996 at this stage and he is pressing the application only in respect of recalling of P.W.12 Anil Adhav. Hence, this application is being considered only in respect of prayer for recall of P.W.12.

3. The present applicant i.e. original accused No.8 and other accused persons are facing prosecution

under Section 302 of I.P.C. During the course of trial, various witnesses came to be examined including P.W.12 Anil Adhav. Thereafter, the applicant preferred an application for recalling of P.W.12. The reason for recalling of the said witness was that the applicant was in possession of some tapes with which he wanted to confront P.W.12 Anil Adhav. The said application came to be rejected by the learned Additional Sessions Judge by order dated 18.7.2005. Being aggrieved by the said order, this application has been preferred.

4. The case pertains to the year 1996. In the said case, it is seen that P.W.12 Anil Adhav was examined by the prosecution on 18.5.2004. The said witness was cross examined on behalf of the accused persons on 18.5.2004 and thereafter, on 27.10.2004 and 29.10.2004. The said witness has been cross examined at length on dates covering a period of about five months. The cross examination of this witness was over on 29.10.2004. The application under 311 came to be preferred on 16.7.2005. In the said case 13 witnesses came to be examined. Thereafter, when the case reached the stage of recording of statements of accused under Section 313, this application came to be preferred by the present applicant on 16.7.2005. From the record, it is seen that the matter was pending for over a year after the

examination-in-chief of P.W.12 Anil Adhav was over and the cross examination of this witness started. Even after the cross examination of this witness i.e. P.W.12 Anil Adhav was over on 29.10.2004, no application has been preferred by the applicant for recall of witness and it has been preferred belatedly on 16.7.2005. No explanation has been given as to why this application has been made at such belated stage.

5. In my view, sufficient opportunity had been given to the accused persons to cross examine P.W.12 and confront him with the tapes, however, it was not done. From the facts of this case, it appears that this application has been preferred belatedly and as an after thought in order to delay the trial. In this view of the matter, I am not inclined to allow the present application.

6. Application is rejected.
